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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/767,418	01/23/2001	Burton Simon	8054.01	2463

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Shawn D. Sentilles  
WYATT, TARRANT & COMBS, LLP  
1715 AARON BRENNER DRIVE  
SUITE 800  
MEMPHIS, TN 38120-4367

EXAMINER

MENDOZA, ROBERT J

ART UNIT	PAPER NUMBER
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3713

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/767,418

Applicant(s)

SIMON ET AL.

Examiner

Robert J Mendoza

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7, 13-37, 43-60 and 66-75 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 13-37, 43-60 and 66-75 is/are rejected.
- 7) ☒ Claim(s) 8-12, 38-42 and 61-65 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

**Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

**Claims 1-7, 13-37, 43-60 and 66-75 are rejected under 35 U.S.C. 102(a) as being anticipated by Herbert (USPN 6,152,822).**

Regarding claims 1-5, 22-35 and 52-58, Herbert discloses, in FIGS. 2-5, col. 2:20-67, col. 3:28-67 and col. 4:62-67, a method of playing a pari-mutuel betting game between a plurality of players, the pari-mutuel betting game based on events unfolding during a live sporting event, a principal objective of the game to acquire the largest number of betting tokens by the end of the sporting event and allocating betting tokens to each of the players prior to commencement of the sporting. Herbert discloses, in FIGS. 2-5, col. 2:20-67, col. 3:28-67, col. 4:62-67, col. 6:55-67 and col. 7:1-67, conducting a plurality of betting events, the betting event based on a bettable event occurring during the sporting event, selecting a betting event, opening a betting line for the betting event, allowing the players an amount of time within which to selectively bet tokens on the possible outcomes of the betting event and freezing tokens be on the open line such that the frozen tokens are not available for further betting until a payoff has been made. Herbert discloses, in FIGS. 2-5, col. 2:20-67, col. 3:28-67, col. 4:62-67, col. 6:55-67, col. 7:1-67, col. 8:1-67, col. 9:48-67 and col. 11:21-67, closing the betting line, monitoring the sporting event until a termination event occurs with regard to the betting event, terminating the betting event

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upon occurrence of the termination event for the betting event and paying winners of each betting event. Herbert discloses, in FIGS. 2-5, col. 2:20-67, col. 3:28-67, col. 4:62-67, col. 6:55-67, col. 7:1-67, col. 8:1-67, col. 9:48-67 and col. 11:21-67, allocating bonus tokens, only one betting line is open at one given time, a new betting line is open at any given time or whenever a prior betting line closes and each of the players can place multiple bets on any open betting line. Herbert discloses, in FIGS. 2-5, col. 2:20-67, col. 3:28-67, col. 4:62-67, col. 6:55-67, col. 7:1-67, col. 8:1-67, col. 9:48-67 and col. 11:21-67, all the electrical components utilized to run the betting event. Herbert discloses, in FIGS. 2-5, col. 2:20-67, col. 3:28-67, col. 4:62-67, col. 6:55-67, col. 7:1-67, col. 8:1-67, col. 9:48-67 and col. 11:21-67, customizing a set of house rules for a private group, selecting a private group through a browser, running a plurality of betting games simultaneously, assigning identification numbers to the players and a wireless internet.

Regarding claims 6, 7, 13-21, 36, 37, 43-51, 59, 60 and 66-75, Herbert discloses, in FIGS. 2-5, col. 2:20-67, col. 3:28-67, col. 4:62-67, col. 6:55-67, col. 7:1-67, col. 8:1-67, col. 9:48-67 and col. 11:21-67, a football, baseball tennis soccer, basketball hockey and horse racing events. Herbert discloses, in FIGS. 2-5, col. 2:20-67, col. 3:28-67, col. 4:62-67, col. 6:55-67, col. 7:1-67, col. 8:1-67, col. 9:48-67 and col. 11:21-67, bonuses on lines decrease in value as the race progresses, such that players who bet correctly in the race have an advantage over players who correctly later in the race, the players pay money to a gambling establishment in exchange for the allocation tokens and the gambling establishment retains a percentage of tokens bet on the betting lines. Herbert discloses, in FIGS. 2-5, col. 2:20-67, col. 3:28-67, col. 4:62-67, col. 6:55-67, col. 7:1-67, col. 8:1-67, col. 9:48-67 and col. 11:21-67, at least some of the lines open at random points in time so as to add uncertainty as to when a line will close and thereby provide

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an incentive to place bets early in a given line and placing bets on evens that occur in a baseball, football, basketball, hockey, tennis and racing. Herbert discloses, in FIGS. 2-5, col. 2:20-67, col. 3:28-67, col. 4:62-67, col. 6:55-67, col. 7:1-67, col. 8:1-67, col. 9:48-67, col. 11:21-67 and col. 12:1-67, allocating additional tokens to each of the players at selected intervals during the game. Herbert discloses, in FIGS. 2-5, col. 2:20-67, col. 3:28-67, col. 4:62-67, col. 6:55-67, col. 7:1-67, col. 8:1-67, col. 9:48-67 and col. 11:21-67, wherein each of the players receive an equal amount of additional tokens.

#### **Response to Arguments**

Applicant's arguments with respect to claims 1-75 have been considered but are moot in view of the new ground(s) of rejection.

#### **Allowable Subject Matter**

Claims 8-12, 38-42 and 61-65 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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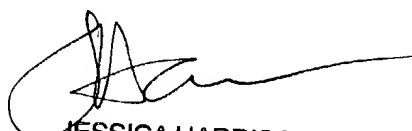
**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to R. Mendoza whose telephone number is (703) 305-7345. The examiner can normally be reached on Monday-Friday from 8:00am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the primary examiner, John Hotaling, can be reached at (703) 305-0780. The USPTO official fax number is (703) 872-9306.

RM

RM  
February 4, 2004

  
JESSICA HARRISON  
PRIMARY EXAMINER